

US EPA ARCHIVE DOCUMENT

**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Part 261**

[SWH-FRL 2109-4]

**Hazardous Waste Management
System; Identification and Listing of
Hazardous Waste****AGENCY:** Environmental Protection
Agency.**ACTION:** Final rule.

SUMMARY: The Environmental Protection Agency is today finalizing an amendment to the hazardous waste management regulations under the Resource Conservation and Recovery Act that defines when a container which has held a hazardous waste is considered "empty." On November 25, 1980 the Agency published an interim final amendment which defined "empty container." Today, after reviewing the public comments on the interim final rule, the Agency is finalizing that rule with one change. The change allows the use of a weight measurement as an alternative to a depth measurement in determining whether a container is empty.

DATES: Final rule effective August 18, 1982.

ADDRESSES: The public docket for this final rule is located in Room 2637, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The public docket is available for viewing from 9:00 a.m. to 4:00 p.m. Monday through Friday, except on legal holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information contact Claire Welty, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-9187.

SUPPLEMENTARY INFORMATION:**I. Background**

On February 26 and May 19, 1980, EPA promulgated the first phase of regulations implementing the hazardous waste management system under Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended (RCRA). These regulations are published in Title 40 of the *Code of Federal Regulations* (CFR) in Parts 260 to 267 and 122 to 124. Among other things, these regulations define when a solid waste becomes a hazardous waste and is therefore subject to RCRA controls and, additionally, when a hazardous waste ceases to be a hazardous waste

and therefore is no longer subject to RCRA Subtitle C requirements. The Agency received numerous comments and questions concerning these provisions. In particular, the Agency received many questions on how the regulations applied to containers which had formerly held hazardous waste: for example, whether an emptied container which previously held hazardous waste was subject to RCRA control, and at what point a container was considered "empty."

In response to these questions, EPA clarified these issues in the form of a preamble discussion, and specifically amended Part 261 to address regulation of so-called "empty" containers (see 45 FR 78524, November 25, 1980). In the interim final amendment, EPA provided a definition of "empty container" (see 40 CFR 261.7) and clearly specified that the hazardous waste remaining in an "empty" container was not subject to the hazardous waste regulations.

The definition of empty container in the November 25, 1980 Federal Register notice was divided into three parts and was keyed to the type of waste in the container. The three categories of "empty" containers were as follows:

(1) *Containers that have held hazardous wastes other than gases and acutely hazardous materials.* An empty container or an empty inner liner of a container is one from which all wastes or other materials have been removed that can be removed using the practices commonly employed to remove the specific materials from that type of container, e.g., pouring, pumping, or aspirating, but in no case can more than 2.5 centimeters (1 inch) remain on the bottom of the container; or, in the case of a lined container, an empty container is one which has had the inner liner removed.

(2) *Containers that have held acutely hazardous materials.* An empty container is one that has been triple rinsed with an appropriate solvent, or cleaned using another method shown to achieve equivalent removal; or, in the case of a lined container, has had the inner liner removed.

(3) *Compressed gas containers.*—An empty container is one which has been opened to atmospheric pressure.

In the same Federal Register notice, EPA also indicated that although it believed that the small amount of hazardous waste residue that remains in individual empty, unrinsed containers does not pose a substantial hazard to human health or the environment while in the containers, the Agency was concerned that drum reconditioners and other facilities that clean or otherwise handle large numbers of "empty"

containers may accumulate and treat or dispose of significant amounts of unregulated residue. EPA, therefore, offered three options for control of these residues and also requested public comment on these options. Specifically, the options which EPA outlined for control of these residues were as follows:

1. Triple rinsing for all containers.
2. Regulation of the residue when it is removed from the container.
3. Limitation on the amount of unregulated residue (regulation only of those persons who handle large amounts of hazardous waste residue in, or removed from, empty containers).

Although the amendment published on November 25, 1980 was written in direct response to public comment on the May 19, 1980 regulations, EPA believed that it was appropriate to request comments on the provisions set forth in §§ 261.7 and 261.33(c) and the three options for regulating residues in empty containers. The remainder of this preamble discusses the comments received on the interim final rule and EPA's response to those comments. (See the preamble to the November 25, Federal Register for details on EPA's basis for defining empty container and the options for regulating residues (45 FR 78526-78527).)

II. Comments on Interim Final Rule and EPA Response

EPA received approximately 30 comments on the §§ 261.7 and 261.33(c) provisions concerning empty containers. The majority of the commenters appeared to favor these amendments, pointing out that a definition of "empty" was necessary to make it clear that containers which have previously held hazardous waste and meet the definition of "empty" no longer contain residues subject to regulation under RCRA.

Commenters suggested two major changes to the definition of empty container: (1) A weight alternative to the "one-inch rule" and (2) special rules for ignitable liquids. In addition, they requested the following: (1) A clarification of the provisions governing disposal of gas residues; (2) an explanation for the more stringent regulation of empty containers that have held materials listed in § 261.33(e); (3) a clarification of whether triple rinsing constitutes "treatment" as defined by RCRA; (4) instructions on manifesting non-empty tank trucks back to a generator which is not a treatment, storage, or disposal facility (TSDF); and (5) information on the impact of the amendment on small businesses. Finally, many of the commenters

addressed the three options which EPA had outlined for regulation of residues in empty containers.

A. Amendment and Clarification of the "One-inch Rule"

Under § 261.7(b)(1) an empty container for most hazardous wastes is defined as one that is empty if:

(i) All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating, and

(ii) No more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner.

EPA received a few comments which requested that EPA provide an equivalent weight alternative to this "one-inch" rule, namely 3 percent of the total weight of the contents of the container. The commenters pointed out that the residue in the bottom of a container is often difficult or even impossible to measure due to the shape of the container (e.g., rounded bottoms) or due to the position of the opening of the container. They indicated that a weight alternative would be more reasonable because large containers (e.g., cargo tanks) of commercial chemicals are regularly weighed both for determining tare weight and for determining how much material has been used before the containers are discarded.

EPA agrees that a weight alternative to the one-inch rule is workable in cases when a container is routinely weighed. There is nothing in the § 261.7 rule, however, that precludes substituting an equivalent weight measurement for the one-inch measurement to determine the amount of waste remaining in a container. For example, the weight of 3 percent of the contents of a flat-bottomed 55-gallon drum standing on end (36 inches high and 22.5 inches in diameter) is equivalent to one inch of residue in that drum. The percentage weight remaining in a container which is equivalent to one inch will, of course, vary depending on the configuration of the container. For example, in a 5,000 gallon cargo tank (400 inches long and 58 inches in diameter) one inch of residue is equivalent to approximately 0.56 percent (28 gallons) of the volume of the tank.

In answer to the commenters' request for a 3 percent weight alternative to the one-inch rule, EPA agrees that a 3 percent weight alternative is acceptable for drum-like containers less than 110 gallons in size (usually 15 gallons to 85 gallons in size) because 3 percent is approximately equivalent to one inch in

a 55-gallon drum. Deciding how to deal with a weight alternative for larger-size containers has, however, raised several issues.

The first issue is whether a 3 percent weight alternative is acceptable for larger size containers, i.e., portable tanks, cargo tanks, and tank car tanks (>110 gallons). EPA thinks not, based on environmental health and safety grounds, because of the excessive amount of waste which this alternative would allow to remain in the container (if it could not be removed by normal means). For example, in a 5,000 gallon cargo tank, 3 percent of the contents of the tank would measure approximately five inches in depth (150 gallons). Based on the typical large size container (>110 gallons) which is used to transport hazardous waste, EPA believes that a 0.3 percent weight alternative to the one-inch measurement is suitable for these containers. Three-tenths of one percent (30 gallons) is approximately equivalent to one inch in a 10,000 gallon tank car; thus, EPA will accept this weight alternative for any size container over 110 gallons.¹ Typically, if hazardous wastes are transported in containers over 110 gallons in size, they are transported in tank-like containers of at least 5,000 gallons in size. Three-tenths of one percent amounts to 15 gallons for a 5,000 gallon cargo tank, 24 gallons for an 8,000 gallon tank car, and 30 gallons for a 10,000 gallon tank car. The Agency believes that if all wastes are removed using the practices commonly employed to remove materials from that type of container, then no more than 0.3 percent of the tank-like container's volume should remain.

Because it apparently is not obvious to the regulated community that an equivalent weight measurement may be substituted for a depth measurement under § 261.7, EPA is amending § 261.7 to make it clear that this practice is acceptable. Based on the reasons outlined above, a weight alternative of 3 percent is allowed for containers less than or equal to 110 gallons in size, and 0.3 percent for containers greater than 110 gallons.

The second issue is whether one inch of residue is indeed environmentally acceptable in defining an empty container that is as large as a tank car,

¹EPA has chosen the point of 110 gallons to distinguish between drums and tank-like containers, to conform with DOT definitions. For example, DOT defines portable tank as any packaging over 110 U.S. gallons which is designed primarily to be loaded into, or on, or temporarily attached to, a transport vehicle or ship, and equipped with skids, mounting, or accessories to facilitate handling of the tank by mechanical means (49 CFR 171.8).

portable tank or cargo tank. One inch of residue amounts to approximately 30 gallons in a 10,000 gallon tank car and 50 gallons in a 20,000 gallon tank car. EPA believes that this amount may be too high and that more waste can be removed by normal means. Upon further analysis, the Agency may propose reducing the 1 inch (0.3 percent) limit in defining a large-size empty container.

In addition to the request for a change to the "one inch" rule, EPA has received numerous telephone requests for clarification of the existing provisions of the rule. First, commenters have asked EPA to clarify how to measure one inch on the bottom of a container with a rounded or cone shaped bottom. The answer is that the inch should be measured from the *deepest* point of the bottom of the container.

Secondly, apparently many individuals are reading the "and" at the end of paragraph § 261.7(b)(1)(i) as "or" and therefore believe that the practice of leaving one inch of residue in a container qualifies the container as being empty, whether or not the container has been emptied of all of its contents by methods commonly employed to remove materials from that type of container, as specified in § 261.7(b)(1)(i). EPA emphatically states that this is not the case. When the two paragraphs § 261.7(b)(1) (i) and (ii) are properly read together, it should be clear that one inch of waste material is an overriding constraint and may remain in an empty container only if it *cannot be removed* by no normal means. The rationale for this provision is that there are certain tars and other extremely viscous materials that will remain in the container even after the container is emptied by normal means. Rather than requiring the complete removal of these materials by extraordinary means, EPA is allowing up to an inch of such material to remain in a container. On the other hand, if extraordinary means are necessary to remove the waste to lower the contents of the container down to a depth of one inch, then they must be employed.

Finally, EPA also wants to remind persons who handle hazardous waste that there are certain DOT requirements for shipment of empty containers which have held hazardous materials. Under 49 CFR 173.29, a container which has held a hazardous material must be cleaned and purged of its contents before the hazardous material label can be removed.

B. Ignitable Liquid Residues in Containers

One commenter was concerned with the one-inch rule as applied to residues in empty containers that are hazardous solely because they are ignitable liquids. The commenter argued that the fluidity coupled with the flash point of liquid ignitable residues should be of more important regulatory concern to EPA than the quantity of liquid ignitable residue remaining in an empty container.

Specifically, the commenter pointed out that many liquid ignitable wastes have low fluidity and therefore do not drain well, and that more than one inch of such materials may remain in a container despite efforts to drain the container. The commenter believed that the residues in such regulated containers are actually of low concern in landfills because they are not mobile liquids. EPA disagrees with the commenter. EPA is concerned with such wastes because they pose a fire hazard (unless the containers are handled in such a way as to prevent ignition), and not necessarily because they may leach into groundwater, especially if these wastes are not also toxic. In fact, containers holding greater than one inch of extremely viscous ignitable material may pose a greater hazard than the same amount of a very fluid ignitable material because the waste will not tend to run out of the container and mix with other wastes and be diluted.

The same commenter stated that the specific flash point of a material within the "broad" EPA ignitability definition (flashpoint <140°F) may be a more important factor than the one-inch residue limitation in defining whether the residue in a container is hazardous and ought to be subject to regulation. The commenter believed that the flash characteristic as well as the flash point is important in determining the hazard posed by an ignitable liquid waste to human health and the environment, and that, for example, container residues (irrespective of quantity) which flash below 140°F but do not support combustion, are less hazardous and should not be treated as hazardous wastes.

In this comment letter, the writer was not so much questioning the one-inch rule as he was questioning EPA's definition of ignitable liquid. EPA previously explained its rationale for setting a flash point limit of 140°F in defining an ignitable liquid. (See 45 FR 33108-33109, May 19, 1980, and "Background Document: § 261.21—Characteristic of Ignitability," May 2, 1980, p. 25.) EPA has previously

recognized that wastes classified by one hazardous waste characteristic may pose various degrees of hazard based on other properties of the waste; for example, EPA has recognized that certain materials that flash will not support combustion, and thus EPA excluded aqueous solutions which contain less than 24 percent alcohol by volume from the definition of ignitable liquid.

The Agency has received other comments on degree of hazard issues and is continuing to resolve them. Recently, the Agency has received a petition from National Paint and Coatings Association (NPCA) on the same issue of ignitable liquids discussed above. As a result, the Agency is considering amending the definition of ignitable liquid and will consider the concerns of the commenter when addressing NPCA's petition. The Agency is therefore not changing the definition of the one-inch rule for ignitable liquids at this time.

C. Gas Residues

In § 261.7(b)(2), EPA defines an empty compressed gas container as one in which the pressure approaches atmospheric. Several commenters expressed concern that users of gas cylinders might try to use extraordinary means to reach atmospheric pressure before returning gas cylinders to the gas suppliers who own them.

The commenters suggested substituting the words ". . . reaches the pressure of the users' internal distribution manifold" for "approaches atmospheric." EPA does not agree with this comment because this change could result in a significant amount of material remaining in the cylinder. EPA defined an empty gas cylinder as one in which the pressure approaches atmospheric, because the Agency is concerned with the hazards posed by the residual gas, which, if improperly managed, may pose a substantial hazard to human health and the environment. EPA believes, however, that this comment largely resulted from confusion over when a compressed gas cylinder becomes subject to RCRA control.

On November 3, 1980, in a letter to Lawrence W. Bierlein of the Compressed Gas Association, John P. Lehman of EPA clarified the applicability of the RCRA hazardous waste regulations to users of compressed gas. The letter stated that the return of the used cylinder to the supplier was not generation of waste under RCRA. This letter was widely distributed to users of compressed gas cylinders and, at the request of many compressed gas users, an edited version

of the information contained in the letter is printed below for the reader's convenience. (The Compressed Gas Association provided the information on the use and disposal of compressed gas cylinders to EPA.)

All compressed gas cylinders are owned by or are under equivalent control of the gas supplier. When the customer has completed his use of the gas, the cylinder is returned to the supplier. As a matter of safety, there is residual pressure in the cylinder when it is returned. (The return transportation is extensively regulated under the Federal Hazardous Materials Regulation, 49 CFR 170-189). The customer's purpose in making the shipment is to return the supplier's property, not to discard the remaining contents of the cylinder. The general practice is to return cylinders for refilling. The customer does not make the decision on the final disposition of the residue in the cylinder; this is the exclusive prerogative of the gas supplier. Further, the decision whether or not to discard the contents of the container is not made until the container is returned to the supplier.

Under these circumstances, the customer is not generating a waste by merely returning the cylinder and neither the returned container nor the contained residue is a "solid waste" as that term is defined by the Resource Conservation and Recovery Act and 40 CFR Part 261. Because the residue gases are not discarded by the customer and the used compressed gas cylinder is returned to the supplier, the decision that renders the cylinder (and contained gas) to be a waste is made by the supplier. The customer's return of the supplier's cylinder that may hold some residue does not constitute the shipment of a solid (or hazardous) waste. The cited DOT requirements apply, however, and the containers may have to be transported as a hazardous material.

D. Regulation of Residues of Wastes Listed in § 261.33(e)

Under § 261.7 and § 261.33(c), residues in containers which held acutely hazardous wastes are not excluded from regulation unless the container which had previously held a waste listed in § 261.33(e) is triple rinsed or cleaned by an equivalent method. One commenter took issue with this provision, stating that the amounts of acutely hazardous wastes remaining in containers which are emptied according to § 261.7(b)(1) are *de minimis* and pose no significant threat to human health and the environment. The commenter further stated that the resulting rinsate would require increased handling and exposure of the waste to humans, and that such small amounts of residue do not justify this increased handling and exposure.

EPA disagrees with the commenter that quantities of acutely hazardous waste remaining in a container which has been emptied according to § 261.7(b)

(1) are *de minimis* and pose little threat to human health and the environment. The chemicals listed in § 261.33 (e) pose an extreme hazard to human health and the environment. For example, chemicals listed for acute oral toxicity have been found to either be fatal to humans in low doses, or to have an oral LD50 toxicity to rats of less than 50 milligrams per kilogram. Such chemicals are extremely powerful poisons; ingestion of less than a teaspoonful of these chemicals could be fatal to an adult. Lesser amounts can be expected to cause illness or even death to children and to more sensitive members of the population.

Additionally, chemicals listed in § 261.33(e) for acute inhalation toxicity have an inhalation LC50 of less than 2 milligrams per liter. These are also extremely effective poisons. Less than 0.2 ounces of such a material are sufficient to lethally contaminate the air of an average size (12' x 12' x 8') room. Indiscriminate disposal of small quantities of such chemicals could be highly dangerous. EPA, therefore, was concerned that the residue remaining in a container that had held a § 261.33(e) material may be lethal in quantities remaining after the container has been emptied according to § 261.7(b)(1). Accordingly, EPA is not changing the interim-final provisions of § 261.7(b)(3) and § 261.33(c) which require triple rinsing or an equivalent method of removal of a § 261.33(e) waste from a container for the container to be considered empty, and is issuing these provisions in final form.

E. Triple Rinsing

1. *Rinsates from Containers Which Have Been Triple Rinsed.* One commenter was particularly concerned with the EPA requirements for the management of rinsate from containers which have been triple rinsed. Under § 261.7(b)(3), a container or inner liner which has held a waste listed in § 261.33(e) can be considered empty if it has been triple rinsed or cleaned by an equivalent method. The rinsate is a hazardous waste if it meets one of the characteristics in Part 261, Subpart C, or if it contains any amount of a listed hazardous waste and therefore remains subject to the regulations via the "mixture rule" (§ 261.3(b)). The commenter expressed concern over rinsates being hazardous via the mixture rule.

This issue is only one of several that have surfaced concerning the mixture rule. EPA is in the process of studying these issues and if necessary will prepare additional amendments to the hazardous waste regulations to address

these concerns. For example, on November 17, 1981, the Agency promulgated an interim final rule which exempted certain categories of mixtures of solid wastes and hazardous waste from the "presumption of hazard" provisions of the hazardous waste regulations (see 46 FR 56582-56589).

2. *Triple Rinsing Is Not Treatment.* On November 25, 1980, in the preamble discussion, EPA stated that triple rinsing does not constitute "treatment" as defined by § 260.10 (45 FR 78528). One commenter disagreed with EPA, stating that EPA had failed to quote the entire definition of treatment and that the act of triple rinsing does indeed meet the latter half of the § 260.10 definition of "treatment". Specifically, the commenter said that triple rinsing meets the definition of treatment because triple rinsing of containers "reduces the waste in volume" and makes a container "more amenable for storage."

EPA disagrees with the commenter and maintains its original position that triple rinsing is not treatment. Most commenters have agreed with the Agency on this point. Therefore, the regulated community should continue to consider that triple rinsing does not constitute treatment, as previously set forth.

F. Dedicated Tank Cars and Tank Trucks

One commenter asked that EPA consider a special exemption for tank-like containers which are in "dedicated service," that is, containers which are used to transport manifested wastes to designated treatment, storage or disposal facilities and returned to the generator to pick up the same waste. When these containers are not unloaded completely they do not meet EPA's definition of empty container. A manifest must then accompany the unloaded (but not "empty") container on its return trip to the generator. The commenter pointed out that the requirement that a manifest accompany an unloaded but not empty container presents a dilemma, because a manifest must indicate a designated treatment, storage or disposal facility, but the generator is often *not* a permitted treatment, storage, or disposal facility.

EPA believes that exemption of dedicated containers that are not empty from the manifest requirements is not an environmentally acceptable solution to this problem. The fact that a container that is not empty is in dedicated service makes its contents no less hazardous to the environment than other hazardous wastes. EPA believes that wastes in dedicated containers that are not empty

should be accompanied by a manifest on the return trip to the generator.

EPA, however, agrees with the commenter that the Part 262 standards technically preclude the option of naming the generator of a hazardous waste as the "designated facility" on the manifest which must be originated by the TSDF when returning a container that is not empty to the generator (if the generator is not also TSDF). Therefore, because there are cases where it may be necessary and environmentally sound to return containers that are not empty to a generator, EPA is considering several alternatives to amend the 40 CFR Part 262 standards to allow the TSDF to name the generator as the designated facility on the manifest. EPA will publish any necessary amendments to Part 262 separately.

G. Impact of Amendment on Small Businesses

One commenter stated that the empty container amendment is overly restrictive, not necessary on technical or public safety grounds, and must be weighed against its economic consequences. The commenter is an industry trade association which represents a substantial number of small businesses, and insists that this amendment will impose a cost burden of millions of dollars on this industry.

EPA disagrees that the amendment is "over restrictive" and "not necessary on technical or public grounds." In paragraph D above, the Agency explained its rationale for requiring triple rinsing of containers which previously held acutely hazardous waste listed in § 261.33(e). As far as regulating containers which previously held other hazardous wastes is concerned, the Agency contends that these containers are dangerous and pose a hazard to human health and the environment. The Agency has therefore set forth § 261.7 as a means of defining when containers are considered to be empty.

EPA further disagrees that the rule is a cost burden; in fact it was industry representatives who requested that EPA define when a container is considered "empty." It was argued that unless the term "empty container" was defined, it could cost industry millions of dollars to handle all containers which previously held hazardous wastes as hazardous wastes. EPA responded to this concern by defining when a container is considered "empty" and sees the amendment as a tremendous cost savings to industry. Most of the commenters agreed that the amendment was, in fact, reasonable.

EPA previously addressed the issue of the impact of the hazardous waste regulations on small quantity generators of hazardous waste in the preamble to the regulations issued on May 19, 1980 (see 45 FR 33102-33105). Under § 261.5, EPA conditionally excluded from regulation those persons who generate less than 1000 kg/mo of hazardous waste or 1 kg/mo of acutely hazardous waste. Under this exclusion, small quantity generators need not comply with the empty container rule. The Agency believes that this exclusion has minimized the impact on small businesses without compromising environmental protection, and therefore does not agree with the commenter that the rule poses a burden on small businesses.

H. Regulation of Hazardous Waste Residues in Empty Containers

As indicated previously, the Agency is concerned with those facilities that clean or otherwise handle large numbers of empty containers (e.g., drum and barrel reconditioners and tank cleaning operations) because they may accumulate, store, treat or dispose of significant quantities of unregulated residues. Therefore, the Agency specifically solicited comments and data on whether residues left unregulated by § 261.7 may pose a substantial hazard to human health and the environment. The Agency discussed three options for regulation of residues in "empty" containers (see 45 FR 78526-78527).

In response, the Agency received a number of comments regarding the three alternatives. The vast majority of commenters favored regulation of the residues when they are removed from the containers, because this alternative would place the minimal regulatory burden on those who handle "empty containers." The commenters argued that this is the most reasonable option because of the smaller quantity of waste to be managed than would be generated by triple rinsing. They further stated that someone handling empty containers would know the composition of the residue from the label on the container because the Department of Transportation (DOT) regulations require that a label remain on hazardous material containers until they are cleaned and purged of their contents.²

² DOT requirements pertain to (a) hazardous waste subject to 40 CFR Part 262 manifest requirements, and (b) unmanifested hazardous wastes (e.g., small quantities of hazardous waste or laboratory samples) that meet the DOT definition of hazardous material.

Commenters also believe that adopting this option will insure that empty containers will be sent to reclamation centers.

Many of these same commenters also argued that another option, triple rinsing, would be an undesirable alternative for two main reasons. First, they argued that triple rinsing would generate additional hazardous waste which would require special handling and, thus, would be a more costly procedure. Second, the commenters stated that such a requirement would require persons handling empty containers to duplicate services already provided by those who reclaim them. One commenter, however, favored triple rinsing. This commenter claimed that it is impractical for a sanitary landfill operator to determine whether a container he receives is "empty" by measuring the residues, and that the landfill operator could be exposed to hazardous residues when crushing these containers with bulldozer-type equipment. This commenter, therefore, favored triple rinsing and marking of rinsed containers as "non-hazardous" so that a landfill operator could know that the containers are safe.

Most commenters felt that the third option—limiting the amount of unregulated residue a person could manage during a particular period without becoming subject to RCRA controls—was unworkable. One commenter in particular thought that any limitation which the Agency would set would, of necessity, be arbitrary.

In evaluating these comments, the Agency generally agrees with the majority of commenters who indicated that control of the residue in empty containers after it is removed is most desirable. The Agency favors this option based on many of the same arguments made by the commenters, i.e., it appears to be the most reasonable and cost-effective way to manage these residues. EPA, however, is not at this time amending the regulations to specifically cover these activities. EPA does not plan to do this until it has studied the problem and has expanded the Agency's data base on the quantities and concentrations of the residues which are generated. EPA has recently completed a study to assess barrel and drum reconditioning processes. This study includes a two-part report, "Barrel and Drum Reconditioning Industry Status Profile," and "Drum Reconditioning Process Optimization." EPA Contract No. 68-03-2905 (available from NTIS as PB 82-113382 and PB 82-113374, respectively). EPA would like to supplement these studies with

additional sampling and analysis information and, if appropriate, a Regulatory Impact Analysis. Upon completing these studies, the Agency will be in a better position to propose amending the regulations to ensure environmentally sound management of these residues. An amendment, if appropriate, might include a specific listing of wastes from these containers.

III. Today's Amendment

In response to the comments received on the interim final regulation, EPA is amending § 261.7(b)(1) by adding a weight alternative to the "one-inch rule." Because this change is being made directly in response to public comments, the change is promulgated as a final rule. Also being published as final rules are the unchanged interim final provisions of paragraphs (a), (b)(2), and (b)(3) of § 261.7 and paragraph (c) of § 261.33.

IV. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect 6 months after their promulgation. In addition, section 553(d) of the Administrative Procedure Act (APA) requires publication of a substantive rule not less than 30 days before its effective date. The purpose of these requirements is to allow persons handling hazardous waste sufficient lead time to prepare to comply with major new regulatory requirements.

The interim final amendments published on November 25, 1980 that are being finalized today were previously made effective on the following dates: § 261.7—November 19, 1980; § 261.33(c)—May 25, 1981. Because the one change to § 261.7 being made today (a weight alternative to the one-inch rule) is merely a clarification of the previous version of § 261.7, for EPA not to make this change effective immediately would cause confusion and serve no useful purpose. EPA therefore believes that the RCRA Section 3010(b) requirement and the APA 553(d) requirement for publication before effective date are inappropriate as applied to the change to § 261.7.

V. Regulatory Impacts

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This interim final regulation is not major because it will not result in an effect on the economy of \$100 million or more, nor will it result in an increase in costs or prices to industry. There will be

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no adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. In fact, this final amendment will reduce regulatory requirements imposed by the hazardous waste regulations that were initially issued on May 19, 1980. Because this amendment is not a major regulation, no Regulatory Impact Analysis is being conducted.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: August 10, 1982.

John W. Hernandez, Jr.,
Acting Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 reads as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 and 6922).

2. Section 261.7 is amended by revising paragraphs (b)(1) (i) and (ii) and by adding paragraph (iii) to read as follows:

§ 261.7 Residues of hazardous waste in empty containers.

* * * * *

(b)(1) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified in § 261.33(c) of this Chapter, is empty if:

(i) All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, *e.g.*, pouring, pumping, and aspirating, *and*

(ii) No more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner, *or*

(iii) (A) No more than 3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 110 gallons in size, or

(B) No more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 110 gallons in size.

* * * * *

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